

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)	
)	
Advanced Methods to Target and Eliminate)	CG Docket No. 17-59
Unlawful Robocalls)	

COMMENTS OF TRACFONE WIRELESS, INC.

Dated: July 3, 2017

I. INTRODUCTION

TracFone Wireless, Inc. ("TracFone") respectfully submits these comments in response to the Notice of Proposed Rulemaking and Notice of Inquiry ("Robocall NPRM & NOI") issued by the Federal Communications Commission ("Commission" or "FCC") in this proceeding.¹

TracFone welcomes the opportunity to provide comments regarding the ability of telecommunications providers to block calls as a means of enabling consumers to avoid receiving illegal robocalls from bad actors.

TracFone supports the Commission's effort, in conjunction with industry, to combat illegal robocalls. These calls not only annoy consumers, they are dangerous as well, leading to scams and fraud. And as calling technology continues to evolve and develop at a rapid pace, the problem of unwanted and illegal robocalls will only get worse without action from industry and regulators. For example, today's technology allows unwanted and illegal calls to be delivered to a consumer's voicemail directly, without the phone ever ringing. TracFone agrees with Chairman Pai that "Americans are reaping the benefits of rapid and exciting changes in the ways we communicate."² TracFone also urges the Commission to recognize that these new technologies can be used by bad actors to deliver unwanted and illegal calls.

The current deterrents to placing illegal robocalls are not sufficient on their own. For example, although the National Do Not Call Registry has helped combat many unwanted

¹ *Advanced Methods to Target and Eliminate Unlawful Robocalls*, CG Docket No. 17-59, Notice of Proposed Rulemaking and Notice of Inquiry, 32 FCC Rcd 2306 (March 23, 2017) ("NPRM & NOI").

² Ajit Pai, Chairman, FCC, *Consumer Protection Month at the FCC*, FCC Blog (June 22, 2017, 2:20 p.m.), <https://www.fcc.gov/news-events/blog/2017/06/22/consumer-protection-month-fcc>.

telemarketing calls from legitimate businesses since its creation in 2003,³ it does not stop the most egregious scam artists, fraudsters, and other bad actors. Unfortunately, as recent FCC enforcement actions illustrate, many of the tools to combat illegal robocalls allow regulatory agencies like the FCC to address large-scale illegal operations only *after* consumer harm occurs.⁴ Consumers and providers need to be empowered with additional tools to stop these illegal operations *before* the harm occurs.

Industry is working diligently to develop a solution to the robocall problem, and the Commission has taken great strides in empowering providers to help combat these calls. The Robocall NPRM & NOI is another step in the right direction. However, the proposed framework to address illegal robocalls in the Robocall NPRM & NOI does not address the role of wireless resellers.⁵ Wireless resellers, like TracFone, can play an important role in combatting illegal robocalls.

TracFone urges the Commission to address the unique challenges faced by wireless resellers. Through its rules and guidance, the Commission should (1) ensure that wireless

³ For example, in 2013, the FTC reported that \$118 million worth of civil penalties and \$737 million in other recovery have been ordered by courts under the Do Not Call law. FTC, Consumer Information, *10 Years of Do Not Call Infographic* (June 2013), <https://www.consumer.ftc.gov/articles/0372-10-years-do-not-call-infographic>.

⁴ See *Adrian Abramovich, Marketing Strategy Leaders, Inc., and Marketing Leaders, Inc.*, Notice of Apparent Liability for Forfeiture, FCC 17-80, File No. EB-TCD-15-00020488 (June 22, 2017) (issuing a Notice of Apparent Liability (“NAL”) for \$120 against a robocaller who placed nearly 100 million illegal robocalls in violation of the Truth in Caller ID Act); *Adrian Abramovich, Marketing Strategy Leaders, Inc., and Marketing Leaders, Inc.*, Citation and Order, DA 17-593, File No. EB-TCD-15-00020488 (June 22, 2017) (issuing a Citation and Order against the same robocaller who placed nearly 100 million illegal robocalls in violation of the Telephone Consumer Protection Act (“TCPA”) and the federal wire fraud statute).

⁵ For the purposes of this filing, we use the term “reseller” to encompass Mobile Virtual Network Operators (“MVNOs”).

resellers' customers have the same tools to combat illegal robocalls as their underlying carriers' customers, (2) ensure that wireless resellers are afforded the same level of certainty as underlying carriers through a robust safe harbor, and (3) ensure that wireless resellers' customers enjoy the same protections for legitimate calls as their underlying carriers' customers.

II. TRACFONE IS COMMITTED TO DOING ITS PART IN COMBATTING ILLEGAL ROBOCALLS

A. TracFone Serves More Than 24 Million Subscribers Who Should Benefit from the Commission's and Industry's Work to Block Illegal Robocalls.

Serving more than 24 million subscribers, TracFone is the leading provider of prepaid (no contract) wireless telecommunications services throughout the United States. TracFone is also the largest national provider of Lifeline services. Through its SafeLink Wireless® program, TracFone offers low-income households access to the opportunities and benefits of affordable wireless services in over 40 states. TracFone subscribers should enjoy the same protections against illegal robocalls as subscribers to underlying carriers.

Illegal robocalls are annoying and dangerous for all consumers;⁶ they are especially problematic for Lifeline subscribers, as the Lifeline benefit covers only a finite set of voice minutes. Through the Commission's Lifeline program, low-income consumers are eligible to receive TracFone's SafeLink Wireless® service when they meet certain income thresholds based on the size of their households or if they participate in a qualifying government assistance program, such as Medicaid or the Supplemental Nutrition Assistance Program. Qualified low-income consumers receive a handset at TracFone's expense, a specified quantity of airtime minutes for each month based on the minimum service standards set forth by the FCC (which are

⁶ See Ajit Pai, *Consumer Protection Month at the FCC* (noting that "[u]nlawful robocalls generate the most frequent source of consumer complaints to the FCC").

currently set at 500 airtime minutes per month),⁷ and unlimited texts. Because the Lifeline benefit covers only a finite set of voice minutes, each illegal robocall essentially eats into this important federal benefit for low-income consumers.

B. TracFone's Role in the Wireless Ecosystem Gives It a Unique Position Regarding Combatting Illegal Robocalls.

TracFone has a unique role in the wireless ecosystem. As a non-facilities-based wireless reseller and the world's largest Mobile Virtual Network Operator ("MVNO"), TracFone offers telecommunications services that are transmitted over the networks of facilities-based, FCC-licensed network operators (referred to herein as "underlying carriers"). MVNOs, as resellers, are distinguishable from underlying carriers because they have no control over the underlying facilities that form the communications networks for their subscribers' traffic. Accordingly, the services and technologies resellers may offer to subscribers are limited to those provided by the underlying networks. Similarly, resellers, like TracFone, have no role in routing or carrying calls. Because they have no role in routing or carrying calls, to facilitate end-user servicing, resellers must enter into agreements with facilities-based licensees and route customers' traffic across the underlying networks. For its part, TracFone has agreements with multiple facilities-based licensees and routes its customers' traffic across multiple networks.

Resellers, like TracFone, have no technical role in blocking calls. For example, in the case of blocking calls at the request of a subscriber, TracFone would have a very different role than the underlying carrier. TracFone itself cannot honor requests from subscribers to block calls. Instead, TracFone's role would be to share the request with the underlying carrier, which

⁷ 47 C.F.R. § 54.408(b)(3).

would be able to honor the request. TracFone must rely on the underlying carriers with which they have agreements to block unwanted and illegal robocalls.

Despite having no technical role in blocking calls, resellers can still play an important role in preventing unwanted and illegal robocalls. TracFone is committed to doing its part to stop unwanted and illegal robocalls. Specifically, TracFone is committed to:

- Sharing information with its underlying carriers, including requests from subscribers to block calls, provided resellers are afforded the same legal protections as underlying carriers;
- Participating in industry efforts aimed to stop unwanted and illegal robocalls; and
- Educating subscribers about what consumers can do to combat unwanted and illegal robocalls.

III. THE COMMISSION SHOULD ADDRESS THE UNIQUE ROLE OF WIRELESS RESELLERS IN ITS ILLEGAL ROBOCALL BLOCKING RULES AND GUIDANCE

A. The FCC Should Require Underlying Carriers that Voluntarily Implement Robocall Blocking to Do So for Wireless Resellers' Customers in the Same Way That They Implement Robocall Blocking for Their Own Customers.

In the Robocall NPRM & NOI, the Commission proposes rules to allow voice service providers to block telephone calls in two main contexts: (1) blocking calls at the request of the subscriber to the originating number, and (2) blocking calls from certain unassigned numbers.⁸ However, the Commission does not discuss the role of wireless resellers in either of these contexts. In adopting these proposed permissive rules that would give voice service providers the ability to block such calls but would not require them to do so, the Commission should require that underlying carriers treat wireless resellers' customers the same as their own customers for purposes of call blocking.

⁸ See *NPRM & NOI* ¶ 11.

First, the Commission proposes to amend its rules to codify prior guidance⁹ that carriers may block calls at a customer's request. If a customer requests that his or her telephone number be blocked to prevent the number from being spoofed, the provider *may* block calls originating from that number.¹⁰ This scenario of a customer requesting that his or her number be blocked has specific nuances if the customer is a wireless reseller's customer. Resellers' subscribers communicate with their reseller, not the underlying carrier whose networks the subscribers utilize for service. As such, if a reseller's subscriber suspects that his or her number is being spoofed and would like to request that the number be blocked, that subscriber would make the request to the reseller. However, as described above, the reseller does not have the technical ability to honor the request. In this situation, the reseller should be able to share the subscriber's request to block with the respective underlying carrier, and the underlying carrier should treat the request in the same way that it would treat a request from its own customer. The Commission also should explicitly permit, under its CPNI rules and in its guidance, the reseller to share its subscriber's blocking request with its underlying carrier.

Second, the Commission proposes to amend its rules to allow provider-initiated blocking where the call originates from a number that the provider knows is unassigned. The NPRM identifies three categories of such unassigned numbers: (1) numbers that are invalid under the North American Numbering Plan ("NANP"), including numbers with unassigned area codes; (2) numbers that have not been allocated by the North American Numbering Plan Administrator ("NANPA") or the National Number Pool Administrator ("PA") to any provider; and (3)

⁹ *Consumer and Governmental Affairs Bureau Clarification on Blocking Unwanted Robocalls*, Public Notice, 31 FCC Rcd 10961 (2016).

¹⁰ See *NPRM & NOI* ¶ 14; *id.* at 15 (proposing under 47 C.F.R. § 64.1200(k)(1) that "[p]roviders may block calls" pursuant to a subscriber request).

numbers that the NANPA or PA have allocated to a provider, but are not currently assigned to a subscriber.¹¹ To the extent that underlying carriers take advantage of the Commission's proposed rules and block numbers originating from unassigned numbers on their networks for their customers, they should do the same for resellers' customers. Underlying carriers should be required to treat resellers' customers' calls in the same way that they treat their own customers' calls.

To ensure that wireless resellers' customers are empowered by the Commission's actions in this proceeding against illegal and unwanted robocalls in the same way that customers of underlying carriers are empowered, TracFone requests that the Commission amend its proposed rules to include this explicit rule: "In the case of a non-facilities-based reseller of a provider's service, such provider shall make available to the subscribers and end-users of the reseller's service any blocking services that the provider makes available to its own subscribers."

B. The FCC Should Extend Any Safe Harbor to Cover Wireless Resellers

To provide certainty to providers, the NOI seeks comment on the appropriate scope of a safe harbor from liability for blocking calls identified using objective standards.¹² However, the NOI does not mention wireless resellers in this safe harbor discussion. TracFone supports a robust safe harbor for providers and urges the Commission to draft a safe harbor broadly enough to cover resellers.

The Commission should account for the role of resellers in call blocking when creating a robust safe harbor. Resellers, like TracFone, do not engage in actual call blocking; they rely on underlying carriers to block calls. For example and as described above, if a TracFone subscriber

¹¹ *NPRM & NOI* ¶ 16.

¹² *See NPRM & NOI* ¶ 34.

suspects that his or her number is being spoofed and would like to request that the number be blocked, then that subscriber would make the request to TracFone. TracFone would then need to share the subscriber's request to block with the respective underlying carrier, and that carrier would be able to honor the blocking request. In light of this, the Commission should make clear that resellers are entitled to the same safe harbor protections as underlying carriers.

Specifically, the robust safe harbor should make clear that where a reseller has acted in good faith in facilitating call blocking pursuant to the Commission's rules, the reseller will not be liable for:

- Any number blocked by the underlying carrier in error (whether the error is on the part of the reseller or the underlying carrier);
- Any loss or harm resulting from a number being blocked in error (whether the error is on the part of the reseller or the underlying carrier);
- Any violation of the Commission's rules in relation to the call blocking. This includes but is not limited to: CPNI rules (to the extent that the Commission does not explicitly exempt sharing between resellers and underlying carriers for purposes of call blocking from the CPNI rules); and the Commission's general policy against providers blocking calls.¹³

C. The FCC Should Offer the Same Protections for Legitimate Callers to Subscribers of a Wireless Reseller Service as It Does for Other Subscribers.

To avoid blocking legitimate calls, the NOI also seeks comment on protections for legitimate callers.¹⁴ It specifically asks whether the Commission should require that providers maintain a "white list" of legitimate callers who give them advance notice *or* whether the Commission should establish a mechanism for legitimate callers to challenge having their calls

¹³ See, e.g., *Connect America Fund*, Report & Order & Further Notice of Proposed Rulemaking, 26 FCC Rcd 17663, ¶ 734 (2011) ("The Commission has a longstanding prohibition on call blocking."); *Call Blocking by Carrier*, Declaratory Ruling & Order, 22 FCC Rcd 11629, 11631 (¶ 6) (2007) ("[N]o carriers, including interexchange carriers, may block, choke, reduce or restrict traffic in any way.").

¹⁴ See *NPRM & NOI* ¶ 37.

blocked in error.¹⁵ Again, the Commission does not mention wireless resellers in this discussion. TracFone supports protections for legitimate callers and urges the Commission to ensure that its customers have the opportunity to benefit from such protections.

Specifically, to the extent that the Commission adopts a “white list” requirement or a challenge mechanism for legitimate callers, TracFone urges the Commission to draft its protections broadly enough to cover resellers’ customers. The Commission should ensure that resellers’ customers enjoy the same benefits as would an underlying carrier’s customer.

IV. CONCLUSION

TracFone applauds the Commission’s efforts to protect consumers against unwanted and illegal robocalls. As the world’s largest MVNO, TracFone respectfully requests that the Commission address the unique challenges faced by wireless resellers in these efforts. Specifically, as explained above, TracFone respectfully requests that the Commission (1) ensure that wireless resellers’ customers have the same tools to combat illegal robocalls as their underlying carriers’ customers, (2) ensure that wireless resellers are afforded the same level of certainty as underlying carriers through a robust safe harbor, and (3) ensure that wireless resellers’ customers enjoy the same protections for legitimate calls as their underlying carriers’ customers.

¹⁵ *See id.*

Respectfully submitted,

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